



DM-10/2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

In re: Application of: Ward, et al.

Group Art Unit: 1731

Serial No.: 09/712,808

Examiner: Halpern, Mark

Filed: November 14, 2000

Our Customer ID: 22827

For: Enhanced Multi-Ply Tissue Products

Our Account No.: 4-1403

Sir: Attorney Ref.: KCX-117 (14096)

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 1.191, Applicant hereby appeals to the Board of Appeals from the decision dated ____ of the Examiner twice/finally rejecting claims ____.
2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 1.192 is transmitted herewith in triplicate.
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 1.194 (due within one month after Examiner's Answer).
4. ☐ Reply Brief under 37 CFR 1.193(b) is transmitted herewith in triplicate.
5. ☐ "Small entity" verified statement filed: ☐ herewith ☐ previously.
6. **FEE CALCULATION:**

	Fees
If box 1 above is X'd enter \$330.00	\$ 330.00
If box 2 above is X'd enter \$330.00	\$ _____
If box 3 above is X'd enter \$290.00	\$ _____
If box 4 above is X-d enter -0- (no fee)	\$ _____

Petition is hereby made to extend the original due date of
December 14, 2003 to cover the date of this paper and
any enclosure for which the requisite fee is (1 month \$110);
(2 months \$420); (3 months \$950); (4 months \$1,480).

Subtotal \$ 950.00
\$ _____

Less any previous extension fee paid since above
original due date.

Subtotal - \$ _____
\$ _____

If "small entity" box 5 above is X'd, enter one-half
(1/2 of subtotal and subtract)

- \$ _____
TOTAL FEE \$ 1,280.00

- ☒ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. show in the heading hereof for which purpose a duplicate copy of this sheet is attached. This statement does not authorize charge of the issue fee in this case.

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By: Timothy A. Cassidy Reg. No.: 38,024
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Date: March 15, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, U.S. Patent and Trademark Office, Post Office Box 1450, Alexandria, VA 22313-1450, on March 15, 2004.

Pamela Knorr

(Typed or printed name of person mailing paper or fee)

[Signature]
(Signature of person mailing paper or fee)



PATENT

ATTORNEY DOCKET NO.: KCX-117 (14096)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re. Application: Ward, et al.)	Art Unit: 1731
)	
Serial No.: 09/712,808)	Examiner: Halpern, Mark
)	
Filed: November 14, 2000)	Acct. No.: 04-1403
)	
Title: Enhanced Multi-Ply Tissue Products		

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

Appellant submits herewith the following Brief on Appeal in accordance with 37 C.F.R. §1.192:

1. Real Party in Interest

The real party in interest in this matter is the Assignee of Record, Kimberly-Clark Worldwide, Inc.

2. Related appeals and interferences

There are no other appeals or interferences known to the Appellants or the Appellants' legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. Status of the Claims

Claims 1-11 and 13-16 are currently pending in the present application, including independent claims 1, 13 and 16. Claims 2, 3, 5-7, 9, 11, 14 and 15 have been withdrawn from consideration as being directed to a non-elected species. Claims 1, 8, 10, 13 and 16, however, have been indicated as being generic to the species election. Thus, should claims 1 and 13 be held allowable, then all of the withdrawn claims should also be allowable as well. All of the pending claims including the withdrawn claims are attached hereto as Exhibit A.

In the Final Office Action dated July 14, 2003, the Examiner rejected claims 1, 4, 8, and 13 under 35 U.S.C. §102(e) as anticipated by, or in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,277,241 to Merker, et al. Claim 10 was

rejected under 35 U.S.C. §103(a) as being unpatentable over Merker et al. in view of U.S. Patent No. 5,904,812 to Salman, et al. Claim 16 was rejected under 35 U.S.C. §103(a) as being unpatentable over Merker, et al. in view of U.S. Patent No. 4,355,021 to Mahl, et al.

4. Status of Amendments

All amendments filed by Applicants have been entered into the record by the Examiner.

5. Summary of the Invention

The present invention is generally directed to multi-ply tissue products. For example, in one embodiment of the present invention, a composite tissue structure is provided that is made from at least three webs or plies. For instance, as shown in Figure 2 of the present application, the composite tissue may include a permeable first outer web and a permeable second outer web that both contain pulp fibers. At least one middle web may be positioned in between the first outer web and the second outer web. In accordance with the present invention, the middle web has a thickness greater than the thickness of either the first or the second outer web. Further, the middle web has a bulk that is greater than the bulk of either the first or second outer web.

The middle web incorporated into the composite tissue structure may be made according to various different processes. For instance, the middle web may comprise an uncreped throughair-dried tissue, a modified wet pressed tissue, and the like. In one embodiment, the middle web may have a corrugated-like structure for providing increased bulk to the composite tissue. In still another embodiment, the middle web may comprise an absorbent foam.

In one particular embodiment as described on pages 8-10 of the present application, the outer webs may comprise smooth tissue webs while the thickened middle web may be textured. The middle ply or web may be, for instance, at least 1.3 times greater in thickness than either of the outer webs. As particularly described on page 10, a tissue of this type has the ability to "glide" on the skin, while at the same time providing a high degree of substance in hand and resiliency. Due to the particular structure defined, the multi-ply tissue has good fluid absorbency and fluid retention properties. The multi-ply tissues are also bulky, yet not stiff. As stated on page 12, due to the presence of the

multiple plies or webs, the tissue structure has enhanced strength without a corresponding reduction in softness.

The multi-ply tissue structure of the present invention also allows for the incorporation of additives into the structure that may be potentially harsh or irritating substances. In particular, the substances may be disguised or buried in the middle ply or web of the multi-ply tissue in order to provide a benefit to the user without otherwise being perceived by the user. For instance, in one embodiment, activated carbon may be incorporated into the middle web.

6. Summary of the Issues

- I. Are claims 1, 4, 8 and 13 anticipated under 35 U.S.C. §102(e) over U.S. Patent No. 6,277,241 to Merker, et al.?
- II. Are claims 1, 4, 8 and 13 unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,277,241 to Merker, et al.?
- III. Is claim 10 unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,277,241 to Merker, et al. in view of U.S. Patent No. 5,904,812 to Salman, et al.?
- IV. Is claim 16 unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,277,241 to Merker et al. in view of U.S. Patent No. 4,355,021 to Mahl et al.?

7. Grouping of the Claims

The claims may be grouped into the following sets:

- (1) Claims 1, 4, 8, 10 and 13
- (2) Claim 16

8. Argument

I. Claims 1, 4, 8 and 13 are not anticipated under 35 U.S.C. §102(e) or obvious under 35 U.S.C. §103(a) in view of U.S. Patent No. 6,277,241 to Merker, et al.

Currently, claims 1, 4, 8, 10, 13 and 16 are pending in the present application, including independent claims 1, 13 and 16. Claim 1 is directed to a composite tissue structure, claim 13 is directed to a tissue, and claim 16 is directed to a method of manufacturing a tissue. All of the claims require the tissue to contain at least three webs, namely a first outer web, a middle web, and a second outer web. In accordance with the present invention, the middle web has a thickness greater than the thickness of either of

the outer webs. Further, the middle web has a bulk that is greater than the bulk of either the first or the second outer web.

In the Final Office Action, claims 1, 4, 8, and 13 were rejected in view of Merker, et al. As opposed to being directed to a multi-ply composite tissue structure containing at least three separate and distinct webs and in stark contrast to the currently pending claims, Merker, et al. is directed to the construction of a single ply base web. Merker, et al. does state that the base web may be made from a stratified fiber furnish having three layers. As shown in the drawings and as clearly described in Merker et al., however, the layers are contained in a single ply or web. Thus, Merker fails to disclose or suggest a multiple web tissue structure as defined in the currently pending claims.

In the Final Office Action, the Examiner asserted that “[t]he layers of Merker are fibrous webs” in order to continue to reject the claims over Merker et al. As stated above, however, Merker, et al. teaches the formation of a single web from a stratified fiber furnish. Nowhere does Merker, et al. disclose or teach the formation of a composite tissue structure that includes a middle web positioned in between a first outer web and a second outer web. Equating a base web as disclosed in Merker, et al. that is made from a stratified fiber furnish with the composite tissue structure of the present invention which includes at least three webs is baseless and misdirected.

In view of the above, Applicants submit that independent claims 1 and 13 and dependent claims 4, 8 and 10¹ patentably define over Merker, et al.

II. Claim 16 is not obvious under 35 U.S.C. §103(a) over U.S. Patent No. 6,277,241 to Merker, et al. in view of U.S. Patent No. 4,355,021 to Mahl, et al.

Independent claim 16 was rejected under 35 U.S.C. §103(a) as being unpatentable over Merker, et al. in view of U.S. Patent No. 4,355,021 to Mahl, et al. Claim 16 is directed to a method of manufacturing a tissue containing at least three separately formed webs, namely a first outer web, a middle web, and a second outer web. Claim 16 further requires administering one or more chemical agents to the middle web. The chemical agent may be, for instance, activated carbon, an antibacterial agent, or a foam.

¹ In the Office Action, dependent claim 10 was rejected under 35 U.S.C. § 103 over U.S. Patent No. 6,277,241 to Merker, et al. in view of U.S. Patent No. 5,904,812 to Salman, et al. Since claim 10 further limits and defines the invention of claim 1, Applicants submit that should claim 1 be held allowable, then claim 10 should be held allowable as well.

As stated above, Merker, et al. does not disclose or suggest a method for manufacturing a tissue containing at least three webs. Instead, Merker, et al. is directed to the formation of single ply base webs made from a stratified fiber furnish. Merker, et al. does state that the base webs may be formed into a two-ply product. In stark contrast to the currently pending claims, however, nowhere does Merker, et al. teach the formation of a composite tissue having at least three webs, let alone the remaining limitations contained in claim 16.

Similar to Merker, et al., Mahl, et al. also does not disclose or suggest a composite tissue made from at least three webs. Thus, since neither of the cited references disclose, suggest or teach a method of manufacturing a tissue containing at least three webs, Applicants submit that claim 16 patentably defines over Merker, et al. either alone or in combination with Mahl, et al. Thus, claim 16 is in complete condition for allowance.

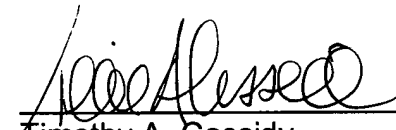
9. Conclusion

In conclusion, it is respectfully submitted that the claims are patentably distinct over the prior art of record and that the present application is in complete condition for allowance. As such, Applicants respectfully request issuance of a patent.

Respectfully submitted,

3/15/04

Date



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APPENDIX A

1. A composite tissue structure, comprising:
at least three webs, the three webs comprising:
 - (a) a permeable first outer web containing pulp fibers;
 - (b) at least one middle web;
 - (c) a permeable second outer web containing pulp fibers, the middle web being positioned between the first and second outer webs; and
 - (d) wherein the middle web has a thickness greater than the thickness of either the first or the second outer web, further wherein the middle web comprises a bulk that is greater than the bulk of either the first or second outer web.
2. (Withdrawn) The tissue of claim 1 in which the middle web comprises uncreped through-air-dried tissues (UCTAD).
3. (Withdrawn) The tissue of claim 1 in which the middle web comprises modified wet pressed tissue (MWP).
4. The tissue of claim 1 in which the middle web comprises through-air-dried tissue (TAD).
5. (Withdrawn) The tissue of claim 1 in which the middle web comprises a fabric-less through-air-dried tissue.
6. (Withdrawn) The tissue of claim 1 in which the middle web provides a corrugated-like structure providing increased bulk to the composite tissue structure.
7. (Withdrawn) The tissue of claim 1 in which the middle web comprises an absorbent foam.
8. The tissue of claim 1 in which at least one outer web is creped during manufacture of the tissue.

9. (Withdrawn) The tissue of claim 1 in which a middle web comprises a corrugated-like structure having increased thickness and bulk.
10. The tissue of claim 1 in which the tissue is calendared.
11. (Withdrawn) The tissue of claim 1 in which the middle web further comprises activated carbon.
12. (Canceled)
13. A tissue, comprising:
at least three webs, at least one of the webs comprising a throughdried paper web, the three webs including:
(a) a permeable first outer web containing pulp fibers;
(b) at least one middle web;
(c) a second outer web containing pulp fibers, the second outer web lying adjacent the middle web or webs, wherein the middle web is between the first outer web and the second outer web;
(d) wherein the middle web has a thickness and bulk greater than the outer webs;
(e) further wherein the first outer, middle, and second outer webs are joined to form at least a three web tissue; and
(f) the tissue having at least one web that received a chemical enhancement.
14. (Withdrawn) The tissue of claim 12 in which the chemical enhancement comprises foam applied to the middle web.
15. (Withdrawn) The tissue of claim 12 in which the chemical enhancement comprises activated carbon applied to the middle web.
16. A method of manufacturing a tissue having at least three separately formed webs, the method comprising:

- (a) providing a permeable first outer web containing pulp fibers;
- (b) providing at least one thick middle web having greater bulk than the first outer web;
- (c) providing a permeable second outer web containing pulp fibers;
- (d) administering to the middle web or webs one or more chemical agents selected from the following agents: activated carbon, antibacterial agents, and foam; and
- (e) joining the first outer web, middle webs/web, and second outer web together to form a tissue.